



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1994

Mr. Rodman C. Johnson
Staff Attorney, Legal Division
Texas Natural Resource Conservation Commission
P. O. Box 13087
Austin, Texas 78711-3087

OR94-798

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25001.

The Texas Natural Resource Conservation Commission ("TNRCC") received two open records requests for records regarding Gibraltar Chemical Resources, Inc. You indicate that you have already released certain de-identified information. You contend TNRCC may withhold the remaining requested information from the public pursuant to sections 552.101, 552.103(a), and 552.111 of the Government Code. Section 552.103(a) applies to information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determine should be withheld from public inspection.

Section 552.103(a) excepts from required public disclosure information that relates to pending litigation to which the state is a party. See Open Records Decision No. 551 (1990). You submitted to this office for review representative samples of the requested

information. The information you enclosed indicates that litigation and settlement negotiations in the case of *State v. Gibraltar Chemical Resources, Inc.*, No. 92-2671-C (Dist. Ct. of Smith County Texas, 241st Judicial Dist. of Texas) are pending. The submitted information relates to this litigation.¹ We, therefore, conclude that you have made the requisite showing that the requested information may be withheld pursuant to section 552.103(a) of the Government Code.²

In reaching this conclusion, however, we assume that the opposing party in the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded, *see* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982), or once the settlement agreement has been executed, *see* Open Records Decision No. 245 (1980).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/RHS/rho

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office

²Because the requested information may be withheld pursuant to section 552.103(a), we do not need to address your other arguments at this time.

Ref.: ID# 25001

Enclosures: Submitted documents

cc: Ms. Leticia Lechon
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(w/o enclosures)